

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BOBBY COIL,

Plaintiff,

ORDER

v.

12-cv-069-wmc

CAPTAIN BOISEN et al.,

Defendants.

Plaintiff Bobby Coil proceeds *pro se* in this case on claims that Wisconsin Secure Program Facility ("WSPF") staff used excessive force against him and that he was kept in an observation cell without adequate clothing or access to personal hygiene in violation of the Eighth Amendment. Defendants filed their answer on December 10, 2013 and a pretrial conference was held before the magistrate judge on January 24, 2014. Now, Coil has moved to dismiss his case without prejudice so he can pursue it at another time.

When a motion for dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because the defendants have been required to defend this action, the court will grant Coil's motion for voluntary dismissal only on the condition that the defendants agree to a dismissal without prejudice. If defendants do not agree to a dismissal without prejudice, Coil will have an opportunity to withdraw his motion or agree to dismissal with prejudice.

ORDER

IT IS ORDERED that defendants may have until May 13, 2014, in which to advise plaintiff Coil and the court whether they agree to Coil's request for dismissal of this action without prejudice. If defendants do not agree to such a dismissal, Coil may have until May 23, 2014 in which to either (1) withdraw his motion to dismiss or (2) advise the court that he has no objection to a dismissal of this case with prejudice. If, by May 23, 2014, Coil fails to request withdrawal of his motion to dismiss this case, then the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 5th day of May, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge